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No. 85-1365

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

v.

JOAQUIN MARIO SERNA,
Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Is a criminal defendant an "accused" within the meaning of the speedy trial guarantees of the Sixth Amendment when a formal accusatory pleading has been filed and is pending against the defendant?

2) Are the States still free to prescribe a reasonable time period after accusation beyond which unjustified delay in trial shall be deemed violative of the Sixth Amendment?

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OPINION BELOW

The opinion of the California Supreme Court is included in the Appendix to the Petition (A-1 to A-57). It should be noted that until publication of the bound volume of 40 California Reporter, 3rd Series, the modification included at A-54 to A-57 is to be found at 40 Cal.Adv.Repts.3d 702a (1986, pamph. #2).

JURISDICTION

The jurisdictional prerequisites are adequately set forth at page 2 of the Petition.

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent portion of the Sixth Amendment to the United States Constitution is set forth at page 2 of the Petition. The Fourteenth Amendment to the United States Constitution provides in pertinent part that:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On September 29, 1978, the People of the State of California, through their attorney the City Attorney of the City of Los Angeles, filed a misdemeanor criminal complaint against respondent Joaquin Mario Serna in the Municipal Court of the Los Angeles Judicial

District, County of Los Angeles. In that complaint respondent was accused of the misdemeanor offense of embezzlement, a violation of California Penal Code section 508. The charge was based upon police reports which had been supplied to the prosecutor. Although the facts alleged in those reports are generally set forth in the Petition (pages 2-3), no proof of these facts has ever been presented in any court of law in connection with respondent's motion to dismiss this prosecution. The facts presented in the reports were considered only in connection with the question of whether respondent had made a showing of actual prejudice sufficient to enforce his right to speedy trial under the Constitution of California. (Serna v. Superior Court (1985) 40 Cal.3d 239, 246, fn. 3; App., A-4, fn. 3.)

Respondent was not arrested until February 15, 1983, over four years after the complaint was filed. On April 25, 1983 he filed a written motion in the Municipal Court

to dismiss for lack of speedy trial as guaranteed by the Sixth Amendment to the United States Constitution and by article I, Section 15 of the California Constitution. The Municipal Court denied the motion as based on the California Constitution on the ground that respondent had not made an adequate showing of actual prejudice as required by the State Constitution. (See Serna v. Superior Court, supra, 40 Cal.3d at p. 249; App., A-8.) The Municipal Court denied the motion as based on the United States Constitution on the ground that the filing of the misdemeanor complaint did not activate the protections of the Sixth Amendment. This ruling was based upon a decision of the California Court of Appeal which had held that the federal speedy trial right did not attach until the defendant's State statutory speedy trial right was activated, i.e., at arraignment in misdemeanor cases. (Overby v. Municipal Court (1981) 121 Cal.App.3d 377,

387; a ruling disapproved in Serna v. Superior Court, supra, 40 Cal.3d at p. 262, fn. 16; App., A-30 to A-31, fn. 16.)

On June 15, 1983, respondent filed a petition for writ of mandate in the Superior Court of the State of California for the County of Los Angeles, contesting the order of the Municipal Court. The Superior Court issued an alternative writ of mandate, but following hearing that court upheld the order of the Municipal Court. Insofar as respondent's Sixth Amendment claim is concerned, the Superior Court ruled that respondent's Sixth Amendment rights were not affected by the delay, relying upon Overby v. Municipal Court, supra.

On September 28, 1983, respondent filed a petition for writ of mandate in the California Court of Appeal, Second Appellate District, Division Four, contesting the ruling of the Superior Court. (See Cal. Code Civ. Proc. § 904.1, subd. (a).) By a two-to-

one vote the Court of Appeal summarily denied the petition, again relying upon Overby v. Municipal Court, supra. (App., A-58.)

On December 30, 1983, respondent filed his petition for hearing in the Supreme Court of the State of California. That petition was granted, and the California Supreme Court's opinion was filed on October 24, 1985. Insofar as respondent's federal claim is concerned, the California Supreme Court ruled that the misdemeanor complaint filed against respondent was an "accusatory pleading", the filing of which activated the protections of the Sixth Amendment.

The California Supreme Court noted that this formal charge had been pending against respondent for over four years at the time of his arrest. The court noted that this Court has established that an affirmative showing of prejudice is not a prerequisite for a defendant to show a violation of Sixth Amendment speedy trial rights. (Moore v. Arizona (1973) 414 U.S. 25, 26.) Accordingly, the California Supreme Court ruled that "the

municipal court erred in failing to receive evidence on the considerations relevant to the weighing process and to resolve petitioner's motion to dismiss pursuant to the dictates of Barker v. Wingo [1972] 407 U.S. 514; by weighing the interests of the defendant and the prosecution to determine whether the right was violated in this case." (Serna v. Superior Court, supra, 40 Cal.3d at p. 262; App., A-31.)

The California Supreme Court also stated that "It would be anomalous in light of the congruent objectives of the speedy trial guarantee and the legislatively adopted one-year period of limitations that has governed misdemeanors for over a century if, after a decision has been made to prosecute an offense as a misdemeanor, the mere filing of a misdemeanor complaint without further action by the state for a period in excess of one year were not presumed to be a violation of the right to speedy trial, and the People compelled to justify the delay." (Serna v. Superior Court, supra, 40 Cal.3d at p. 702b;

App., A-55 to A-56.) "Therefore, although there may be cases in which a defendant is able to demonstrate actual prejudice from delays of shorter duration, he need not do so when the delay exceeds one year. Delays of that magnitude are presumptively prejudicial." (Id., at p. 254, as modified, p. 702b; App., A-17, as modified A-56.)

Petitions for rehearing were denied, and the California Supreme Court's remittitur was filed on December 20, 1985. That court's peremptory writ of mandate issued on January 15, 1986. (App., A-62 to A-63.)

ARGUMENT

This Court has, in its Rules, specified the factors bearing on whether a Petition for Writ of Certiorari should be granted. In Rule 17.1(b) it is stated that certiorari may be granted "when a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals." Rule 17.1(c) provides that review in this Court is appropriate "when a state

court . . . has decided a federal question in a way in conflict with applicable decisions of this court."

Under these Rules, certiorari is not appropriate in this case. As will be shown below, the determination of the California Supreme Court that a defendant is an "accused" within the meaning of the Sixth Amendment after formal charges are filed and while such charges are pending is not in conflict with the decision of any state court of last resort, nor any federal court of appeals, nor this Court. Rather, that conclusion is in harmony with every other case ever decided on the issue by those courts, and is compelled by the decisions of this Court.

Although the California Supreme Court's ruling that the right to speedy trial should be conclusively presumed to have been violated by an unjustified delay of over one year in a misdemeanor prosecution is not compelled by federal authority, this court has specifically stated that the States are

free to adopt such constructions of the Sixth Amendment. It has also been determined in federal case authority that prejudice to the accused may be irrelevant in the face of substantial and unjustified delay. Accordingly, the decision is not in conflict with any state or federal authority.

I

A DEFENDANT IS AN "ACCUSED" WITHIN THE MEANING OF THE SIXTH AMENDMENT UPON THE FILING OF THE ACCUSATORY PLEADING AND WHILE SUCH PLEADING IS PENDING

In the landmark case of United States v. Marion (1971) 404 U.S. 307, this Court addressed the question of when a defendant's right to speedy trial as guaranteed by the Sixth Amendment to the United States Constitution attached. This Court noted that the Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial

. . . ." (Emphasis added.) This Court stated that "On its face, the protection of the amendment is activated only when a criminal prosecution has begun and extends only to those persons who have been 'accused' in the course of that prosecution." (Id., 404 U.S. at p. 313.) This Court thus determined that the Sixth Amendment was activated by either one of two events, to wit: "a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge . . . ." (Id., 404 U.S. at p. 320.)

There has never been any confusion in either the courts of the United States, nor the courts of the several States, as to the meaning of this Court's pronouncement: the date upon which the Sixth Amendment's protections attach "is the date on which the defendant is arrested and held to answer on a criminal charge, or the date on which he is formally charged, whichever is earlier." (United States v. Cordova (9th Cir., 1976) 537 F.2d 1073, 1075, emphasis added.) "It

thus appears established that the sixth amendment right to a speedy trial attaches at the time of arrest or of formal charges, whichever comes first." (United States v. Jones (D.C. Cir., 1975) 524 F.2d 834, 839, fn. 7.) These decisions make it clear that a criminal defendant is "accused" within the meaning of the Sixth Amendment when a formal charging document has been filed against him, whether or not he has been arrested prior to the filing of such a document.

Thus, if this Court should grant certiorari, this Court would be faced with one of two possible options. This Court could either reaffirm its own rulings made over the past 15 years to the effect that a defendant is accused once the accusatory pleading has been filed, and thereby affirm the decision of the California Supreme Court, or else this court would be required to overrule its construction of the Sixth Amendment first made in United States v. Marion, supra, 404 U.S. 307, and restated in such cases as United States v. MacDonald (1982) 456 U.S. 1, United

States v. Gouveia (1984) ___ U.S. ___ [104 S.Ct. 2292], and, in this very term, United States v. Loud Hawk (1986) ___ U.S. ___ [106 S.Ct. 648].

This court's present construction of the Sixth Amendment has been followed in numerous decisions of State and federal courts. The California Supreme Court cited 13 different cases from various States adhering to this same construction of the rule. (Serna v. Superior Court, supra, 40 Cal.3d at p. 258; App., A-23 to A-24.) Many more could be cited as well. (See, for example, State v. Hall (1981) 129 Ariz. 589, 637 P.2d 398; State v. Smith (1978) 224 Kan. 662, 585 P.2d 1006; State v. Dewey (La., 1982) 408 So.2d 1255; State v. Collins (N.H., 1975) 345 A.2d 162; State v. Baker (Tenn., 1981) 614 S.W.2d 352.) Notably, petitioner does not cite a single case from any State which is contrary to this uniform body of law.

The federal courts are equally uniform in holding that a criminal defendant is an "accused" once the accusatory pleading has

been filed. (In addition to Cordova and Jones cited above, see United States v. Martin (6th Cir., 1976) 543 F.2d 577; United States v. Walters (5th Cir., 1979) 591 F.2d 1195; United States v. Gonzales (11th Cir., 1982) 671 F.2d 441.) As was stated by the Court of Appeals in United States v. Hill (5th Cir., 1980) 622 F.2d 900, 909: "The Sixth Amendment clock begins to tick upon indictment when no prior arrest on the alleged offense is involved." (Emphasis added.)

Petitioner claims that this uniform rule has been rejected by two federal circuits, the Second and the Tenth. (Pet., p. 12.) This is incorrect. The Court of Appeal for the Second Circuit recently considered the question of whether or not the Sixth Amendment speedy trial right applied to a 16-month delay following the filing of charges, where there was no evidence that the defendant was aware that the charges had been filed (precisely the situation addressed in the present

case). The Court of Appeals held, in conformance with all other case law, that the defendant was an "accused" during that period of delay. (United States v. Jenkins (2nd Cir., 1983) 701 F.2d 850, 855.)

The cases cited by petitioner, United States v. Watson (2nd Cir., 1979) 599 F.2d 1149 and United States v. Hay (10th Cir., 1975) 527 F.2d 990, concerned the question of whether the Sixth Amendment was violated by reasonable delay following the filing of a sealed indictment. The California Supreme Court has correctly recognized that a misdemeanor complaint in California is in no way equivalent to a sealed (and hence secret) indictment under federal law. The misdemeanor complaint is a public accusation of crime, and thus Watson and Hay (even if correctly decided, which is not conceded) are not in conflict with the ruling of the California Supreme Court and do not support petitioner's argument. (Serna v. Superior Court, supra, 40 Cal.3d at pp. 261-262; App.,

A-28 to A-30.) [1]/ It is, perhaps, stating the obvious to note that the Second Circuit recognized this distinction since that court decided both Watson and Jenkins.

Thus, petitioner has been completely unsuccessful in the attempt to show that the decision of the California Supreme Court is at variance with any state court of last resort, or any federal court of appeals. Instead, as the above-cited authority makes certain, the opinion below is in harmony with

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[1] The claim by petitioner that misdemeanor complaints would probably not be located is specious. The fact that the charge "might not" become known is no answer to the assertion that the public nature of the accusation distinguishes it from a secret indictment which cannot be revealed. Moreover, the argument that misdemeanor charges may not generally become public knowledge is remarkable and ironic coming, as it does, from a prosecutorial agency which has released the names of people arrested for misdemeanor offenses for publication by the media (Los Angeles Times, 12/3/82, Pt. II, pg. 1), and which prosecutes offenses in a County where the District Attorney has also publicized the names of people for whom warrants of arrest have been issued on minor offenses. (Los Angeles Times, 10/17/84, Pt. I, pg. 3.)

every other decision ever issued on this subject. Petitioner can cite to no contrary opinion whatsoever.

Finally, petitioner's attempt to show that the California Supreme Court (and by extension, every other court in the United States) has departed from controlling authority of this Court is equally unavailing. Petitioner struggles mightily to create an ambiguity in this court's opinion in United States v. Marion, supra, 404 U.S. at p. 320.) (Pet., pp. 11-12.) Yet this ambiguity has been discovered by no court of which respondent is aware. It is manifest that this court's determination in Marion was that one of two events activated the protections of the Sixth Amendment: arrest or the filing of formal charges. Although petitioner attempts to reconstruct this court's opinions into a holding that the filing of charges does not activate those protections unless the defendant is also arrested, this court has made it certain that it is only "when no indictment is outstanding" that the actual restraints of

arrest are necessary to invoke the protections of the Sixth Amendment. (United States v. Loud Hawk, supra, ___ U.S. ___ [106 S.Ct. at p. 654.) This court has also repeatedly held that the protections of the Sixth Amendment apply while "charges are pending." (United States v. MacDonald, supra, 456 U.S. at p. 7.) 2/

Petitioner does not dispute the holding of the California Supreme Court that a misdemeanor complaint is a formal accusatory pleading. Indeed, it would be impossible for petitioner to do so, since the misdemeanor complaint is the only charging document which

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2 Petitioner's confusion regarding this Court's opinions may be based upon petitioner's misapprehension that there are only two interests protected by the speedy trial provisions of the Sixth Amendment. (Pet. pp. 8-10.) Of course, there are three interests which are considered to determine prejudice: (1) prevention of oppressive pretrial incarceration; (2) minimizing anxiety and concern of the accused; and (3) limiting the possibility that the defense will be impaired. (Barker v. Wingo (1972) 407 U.S. 514, 532; United States v. Williams (1985) ___ F.2d ___ [9th Cir., No. CR 80-192-FR, 11/13/85.) Further, as this Court has emphatically stated, a showing that any of these interests has actually been affected by delay is not necessary to assert a speedy trial claim. (Moore v. Arizona, supra, 414 U.S. 25, 26.)

exists in misdemeanor cases in California. Moreover, this court has repeatedly emphasized that a defendant should look to the statute of limitations for his protection against undue delay before the filing of charges, and to the Sixth Amendment after such charges are filed. (See United States v. Marion, supra, 404 U.S. at p. 323; United States v. Lovasco (1977) 431 U.S. 783.) It would certainly be anomalous for a State to provide for a document, the filing of which would satisfy the statute of limitations, but would not activate Sixth Amendment protections. Under California law, the statute of limitations is satisfied by the filing of a misdemeanor complaint. (Cal. Pen. Code § 804, subd. (b).) Thus, the misdemeanor complaint is an accusatory pleading, the filing of which activates the protections of

the Sixth Amendment. 3/

Thus, petitioner has utterly failed to show that this court's jurisdiction to grant certiorari in this case would be properly

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3 If this Court does grant certiorari in this case, this Court may desire to address the question of what sort of document qualifies as an accusatory pleading. Respondent would submit that, in light of this Court's rulings regarding the interplay between the Sixth Amendment and the statute of limitations, an "accusatory pleading" should be defined as that document which satisfies the statute of limitations. The rule in California is presently to the contrary. The filing of a felony complaint and the issuance of an arrest warrant satisfies the statute of limitations. (Cal. Pen. Code § 804, subd. (d).) However, that document is not considered an accusatory pleading within the meaning of the Sixth Amendment. (Serna v. Superior Court, supra, 40 Cal.3d at p. 257; App., A-22 to A-23.) Thus, an unreasonable period of delay may follow the filing of a felony complaint and the issuance of an arrest warrant during which the defendant is protected by neither the Sixth Amendment nor the statute of limitations.

exercised under either Rule 17.1(b) or 17.1(c). The opinion of the California Supreme Court is not in conflict with any other State court, nor with any federal court of appeals. Instead, that opinion is in harmony with every other State court, and with every federal court of appeals which has considered the subject. Further, the decision of the California Supreme Court is not contrary to any decision of this Court, but is instead compelled by applicable authority. Accordingly, certiorari should be denied.

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II

A STATE COURT MAY ADOPT AN ABSOLUTE TIME LIMIT BEYOND WHICH UNJUSTIFIED DELAY IS PRESUMED TO VIOLATE THE SIXTH AMENDMENT

The California Supreme Court has ruled that a delay of over one year following a defendant's accusation of a misdemeanor offense shall be presumed to be a violation of the right to a speedy trial, entitling the defendant to dismissal if the delay is not justified. (Serna v. Superior Court, supra, 40 Cal.3d at p. 702b; App., A-55 to A-56.) Respondent readily admits that the discussion of this point is ambiguous, and under some constructions may be contrary to authority of this Court. For example, if the ruling of the California Supreme Court is that there can be no violation of the Sixth Amendment if the delay is less than one year, then this holding is contrary to the determination of this court that Sixth Amendment violations

can be based upon shorter delays. (See Barker v. Wingo (1972) 407 U.S. 516, 530-531, and nb. fn. 31, noting that a constitutional depravation could be found from a delay of nine months.)

However, appellate opinions should be interpreted in such a manner as will lead to a constitutional construction, not an interpretation which would lead to their invalidity. In that regard, respondent notes that although this Court has declined to quantify the Sixth Amendment speedy trial right into a specific number of days or months, this Court has also ruled that "The States, of course, are free to prescribe a reasonable period consistent with constitutional standards . . . ." (Barker v. Wingo, supra, 407 U.S. at p. 523.) Further, it is established federal law that if a delay is lengthy and unjustified, actual prejudice to the defendant may become irrelevant. (Hoskins v. Wainwright (5th Cir., 1973) 485 F.2d 1186, 1192.)

Properly considered, all the California Supreme Court has done is set an outside limit for unjustified delay in a misdemeanor case. If the delay has been for over a year, and the prosecution presents no evidence of justification, then prejudice becomes irrelevant (or, in the words of the California Supreme Court, it is "presumed"). Thus, an unjustified delay of over a year must result in dismissal of the charge. However, consistent with the authority of this Court, a defendant must still be able to challenge delay of less than a year, in which case an absence of prejudice may weigh in the balance against the defendant. Further, if the prosecution can demonstrate justification for a delay of over one year, then again the court engages in the mandated balancing test.

It may thus be seen that, properly interpreted, the opinion of the California Supreme Court does not conflict with authority of this Court. This Court should not presume that the Sixth Amendment will not be properly applied by the courts of California,

nor that the present opinion will be interpreted by those courts in a manner inconsistent with the rulings of this Court. If the courts of California do depart from the standards set forth by this court, keeping in mind the freedom granted by this Court to the States to develop means to enforce the Sixth Amendment, then this Court will surely have the opportunity to review such a development in the future. Accordingly, certiorari should be denied in the present case.

CONCLUSION

The rule that a criminal defendant is an "accused" within the meaning of the speedy trial guarantee as soon as the formal charging document has been filed against such defendant is well-settled in the law of the United States, and of the several States. Petitioner does not cite a single opinion to the contrary. Instead, petitioner asks this Court to overrule its own prior opinions rendered on this subject, and effectively

overrule literally hundreds of rulings from State and federal courts which have relied upon this Court's statement of the law.

Petitioner does not provide this Court with any persuasive reason why this Court should now abandon at least 15 years of precedent. Accordingly, this petition for writ of certiorari should be denied.

Respectfully submitted,

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Philomene J. Swenson,
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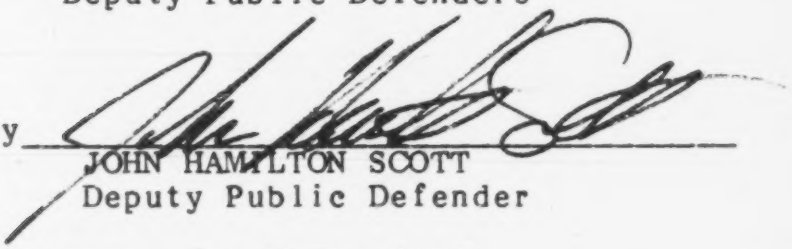

By _____
JOHN HAMILTON SCOTT
Deputy Public Defender

Attorneys for Respondent

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the County of Los Angeles, California. I am over the age of 18, an not a party to the within action. My business address is 210 West Temple Street, 19th floor, Los Angeles, California 90012.

On March 7, 1986, I served the within Brief of Respondent in Opposition to Petition for Writ of Certiorari (California v. Serna, No. 85-1365), upon the following parties by placing three (3) copies thereof in a sealed envelope with postage fully prepaid in the United States Post Office mail box at Los Angeles, California, addressed as follows:

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All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of March, 1986, at Los Angeles, California

Madeline C Boal

MADELINE BOAL